CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 18-210, CD1

RESOLUTION

AUTHORIZING EXEMPTIONS FROM CERTAIN REQUIREMENTS RELATING TO THE POKAI BAY SELF-HELP HOUSING AFFORDABLE HOUSING PROJECT AT WAIANAE, OAHU, HAWAII, TAX MAP KEYS 8-6-027: 001 THROUGH 004, 049 THROUGH 054, AND 064 THROUGH 123.

WHEREAS, the Self-Help Housing Corporation of Hawaii ("Applicant"), a Hawaii nonprofit corporation, proposes to develop a self-help affordable housing project known as the Pokai Bay Self-Help Housing Project on approximately 13.16 acres of land owned by the Applicant and zoned R-5 Residential District, which has been subdivided into 70 residential lots, located in Waianae, Oahu, identified as Tax Map Keys 8-6-027: 001 through 004, 049 through 054, and 064 through 123, and further identified as parcels 1 through 4, 49 through 54, and 64 through 123 of Tax Map Plat No. (1) 8-6-027, (the "Project"); and

WHEREAS, the Project involves the development of one single-family dwelling on each of the 70 residential lots, and will consist of 35 two-story, three-bedroom, two-bathroom dwellings of 1,155 square feet each; and 35 one-story, four-bedroom, two-bathroom dwellings of 1,248 square feet each; and

WHEREAS, 12 dwellings (17 percent of the total dwellings) will be affordable to households earning 50 percent or below of the area median income ("AMI") for Honolulu; 58 units (83 percent of the total dwellings) will be affordable to households earning 51 to 80 percent of the AMI; and all of the 70 dwellings will remain affordable in perpetuity; and

WHEREAS, the Project consists of two phases: In the first phase (education), the Applicant will provide home purchasers with financial and loan counseling, and a homeownership course. In the second phase (construction), the Applicant will provide technical assistance and, under the direction of a construction supervisor, home purchasers will learn skills to build the Project's dwellings (home purchasers contribute approximately 1700 hours of labor over a one-year period, and this sweat equity serves as the down payment toward the purchase of a home); and

WHEREAS, construction has started on a few of the 70 single-family dwellings, and construction on the remaining dwellings has yet to begin; and

WHEREAS, the Project is eligible to receive consideration under the City's rules regulating implementation of Section 201H-38 of the Hawaii Revised Statutes ("HRS"), which require that at least 50 percent of a project's total units must be available to households earning at or below 80 percent of the AMI; and

RESOLUTION

WHEREAS, the City Council is empowered and authorized to approve the Project, which may include exemptions from statutes, ordinances, charter provisions and rules of any government agency relating to planning, zoning, construction standards for subdivision, development and improvement of land and the construction of units thereon pursuant to HRS Sections 46-15.1 and 201H-38; and

WHEREAS, the City Council has reviewed the preliminary plans and outline specifications dated May 2018 (Pokai Bay Subdivision), January 2013 (Model 1248), and July 2015 (Model 1120), prepared by L and M Architects, and submitted to the Council by the Department of Planning and Permitting ("DPP") on September 27, 2018 by Departmental Communication 624 (2018); and

WHEREAS, the Project is consistent with the housing and community development goals and objectives of the City; and

WHEREAS, the granting of the exemptions is necessary for the timely and successful implementation of the Project; and

WHEREAS, the exemptions meet the intent of HRS Chapter 201H, and the minimum requirements of health and safety; and

WHEREAS, the development of the proposed housing project does not contravene any safety standards, tariffs, or rates and fees approved by the Public Utilities Commission for public utilities or of the various boards of water supply, authorized under HRS Chapter 54; now therefore,

BE IT RESOLVED by the City Council of the City and County of Honolulu that it approves the Project, which approval includes exemptions from certain fees for the Project as set forth in the preliminary plans and specifications referenced above, as generally identified below:

<u>Application Fees and Infrastructure and/or Public Works Fees and Charges</u>

1. Exemption from Section 18-6.1 of the Revised Ordinances of Honolulu 1990 ("ROH"), to allow an exemption from payment of plan review fees, estimated at $42,000 (which includes reimbursement of fees already paid).

2. Exemption from ROH Section 18-6.2, to allow an exemption from payment of building permit fees, estimated at $210,000 (which includes reimbursement of fees already paid).

3. Exemption from ROH Section 14-13.6(d), to allow an exemption from payment of erosion and sediment control plan review fees, estimated at $17,500 (which includes reimbursement of fees already paid).

BE IT FURTHER RESOLVED that references to specific statutes, ordinances, or regulations include any respective successor statutes, ordinances or regulations; and

BE IT FURTHER RESOLVED that this resolution is null and void unless construction of all Project dwellings for which construction has not yet begun as of the effective date of the resolution, commences no later than 12 months after the effective date of this resolution; and

BE IT FURTHER RESOLVED that the exemptions granted for this Project are not transferable to any other real property; and

BE IT FURTHER RESOLVED that the final plans and specifications for the Project constitute the zoning, building, and construction standards for the Project and are approved if those plans and specifications do not substantially deviate from the preliminary plans and outline specifications submitted to the City Council; provided that minor modifications to the design character of the building, and/or landscaping, may be approved by the DPP, if such modifications are consistent with the prevailing neighborhood character; and

BE IT FURTHER RESOLVED that no action may be prosecuted or maintained against the City and County of Honolulu, its officials or employees, on account of actions taken by them in reviewing or approving the plans and specifications, or in granting the exemptions listed herein; and

BE IT FURTHER RESOLVED that the DPP Director is authorized to execute the Development Agreement substantially in the form attached hereto as Attachment 1 and made a part hereof, pursuant to the terms, conditions, and provisions approved as to form and legality by the Corporation Counsel as being necessary, advisable, or desirable for the purpose of carrying out this resolution; and

BE IT FURTHER RESOLVED that the DPP Director is authorized to execute any incidental or related documents to carry out the transactions described above, so long as said documents do not increase either directly or indirectly the financial obligations of the City; and

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 18-210, CD1

RESOLUTION

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to: Kathy K. Sokugawa, Acting Director, Department of Planning and Permitting, 650 South King Street, 7th Floor, Honolulu, Hawaii 96813; and Claudia Shay, Executive Director, Self-Help Housing Corporation of Hawaii, 1427 Dillingham Boulevard, Suite 305, Honolulu, Hawaii 96819.

INTRODUCED BY:

Ernest Martin (br)

DATE OF INTRODUCTION

September 27, 2018
Honolulu, Hawaii

Councilmembers

ATTACHMENT 1

DEVELOPMENT AGREEMENT

POKAI BAY SELF-HELP HOUSING CORPORATION OF HAWAII

1. DATE OF THIS AGREEMENT

_____, 2018

2. PARTIES; NOTICES

City and County of Honolulu
Honolulu Hale
530 South King Street
Honolulu, Hawaii 96813

With copy to: Director
Department of Planning and Permitting
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

Executive Director
Self-Help Housing Corporation of Hawaii
1427 Dillingham Boulevard, Suite 305
Honolulu, Hawaii 96817

3. DEFINITIONS

A. "Area Median Income" or "AMI" means the median income determined by the United States Department of Housing and Urban Development annually for the Honolulu Metropolitan Statistical Area as adjusted for household size.

B. "City" means the City and County of Honolulu.

C. "City Council" means the City Council of the City and County of Honolulu.

D. "Department of Planning and Permitting" and "DPP" means the Department of Planning and Permitting of the City and County of Honolulu.

E. "Developer" means the Self-Help Housing Corporation of Hawaii, a Hawaii nonprofit corporation.

F. "Preliminary Plans" means the preliminary plans and outline specifications dated May 2018 (Pokai Bay Subdivision), January 2013 (Model 1248), and July 2015 (Model 1120), prepared by L and M Architects, and submitted to the City Council on September 27, 2018.

G. "Project" means the Pokai Bay Self-Help Housing project. The Project involves a team self-help housing method where one affordable single-family dwelling will be developed on each of 70 subdivided residential lots, with all 70 dwellings remaining affordable in perpetuity.

H. "Project Land" means that certain real property located at 86-176 Hokuukali Street, 86-175, 86-179, 86-180, 86-183, 86-184, 86-185, 86-190, 86-191, and 86-195 Leihoku Street; and 86-200 to 86-303 Pokalikena Way, Waianae, Hawaii 96792; identified as Tax Map Keys 8-6-027: 001 to 004, 049 to 054, and 064 to 123, further identified as parcels 1 through 4, 49 through 54, and 64 through 123 of Tax Map Plat No. (1) 8-6-027, and more particularly described in Exhibit A, attached to this instrument and made a part of hereof.

I. "Resolution" means Resolution 18-210, CD1 adopted by the City Council on _____.

4. RECITALS

A. The Developer requested that the City Council exercise the authority stated in Section 201H-38 of the Hawaii Revised Statutes ("HRS"), and any successor statute, granted to the City under the provisions of HRS Section 46-15.1, by exempting the Project from certain planning, zoning, construction standards of subdivisions, development and improvement of land, and the construction of units thereon, in order to accommodate development of the Project by the Developer on the Project Land as more particularly described in the Preliminary Plans.

B. The City Council approved the Preliminary Plans, which include the requested exemptions by its adoption of Resolution 18-210, CD1 on _____, in furtherance of and consistent with the public purpose of providing affordable living opportunities.

5. DEVELOPER'S AGREEMENTS

The Developer agrees with the City as follows:

A. The Project consists of the following:

(1) 35 single-story, four-bedroom, two-bathroom, single-family dwellings of 1,248 square feet each; and 35 two-story, three-bedroom, two bathroom, single-family dwellings of 1,155 square feet each. The dwelling units will be located on 70 subdivided residential lots ranging in size from 5,000 to 9,101 square feet, and all units will have heights ranging from _____ to _____ feet. Each dwelling will have two parking stalls.

(2) 12 for-sale dwellings (17 percent of the total dwellings) must be affordable to households earning 50 percent and below of the AMI, and the remaining 58 for-sale dwellings (83 percent of the total dwellings) must be affordable to households earning between 51 percent and 80 percent of the AMI. All 70 affordable dwellings must remain affordable in perpetuity. For purposes of ensuring eligibility with affordability requirements, initial home purchases will be reviewed by the State Hawaii Housing Finance and Development Corporation, and annual recertifications will be monitored by the United States Department of Agriculture Rural Development (the mortgage loan provider).

(3) The Project involves a team self-help housing method where self-help home purchasers contribute approximately 1700 hours of labor over a one-year period to help each other build the Project's single-family dwellings, with this sweat equity serving as the down payment toward the purchase of a home. The Project consists of two phases. In the first phase (education), the Developer shall provide financial and loan counseling, and a homeownership course to home purchasers. In the second phase (construction), the Developer shall provide technical assistance and, under the direction of a construction supervisor, home purchasers learn skills to build the dwellings.

B. To the extent economically feasible, Project dwellings must use energy and water conservation fixtures, such as low-pressure sodium lamps, solar water heating or heat pumps, low-flush toilets, and low-flow plumbing fixtures. The Developer's design development plans shall be as approved by the Department of Planning and Permitting.

C. The Developer shall furnish to the DPP a performance and payment bond provided by the general contractor of the Project, which assures that the Project will be completed lien-free.

D. The Developer shall submit the following reports to the City subject to verification as reasonably requested by the City:

(1) A quarterly status report on the progress of the construction of the Project, commencing at the start of construction and continuing on the first day of each calendar quarter (January, April, July, October) thereafter, until construction of the Project is completed; and

(2) A final report to the City summarizing the work completed within 90 days after obtaining the last certificate of occupancy issued by the DPP for the Project.

E. The Developer shall notify the City within 24 hours or as promptly as practicable if any lender shall declare the Developer to be in default.

6. CITY EXEMPTIONS

The City agrees with the developer that the exemptions granted in Resolution 18-210, CD1, shall apply to the Project.

7. CONDITION OF THE RESOLUTION

A. If construction of all Project dwellings for which construction has not yet begun as of the effective date of the Resolution 18-210, CD1, does not commence within 12 months after the effective date of the Resolution, the exemptions granted by the Resolution shall be null and void.

B. If the Developer fails to complete construction of the Project, the exemptions granted by the Resolution 18-210, CD1, shall be null and void.

C. The exemptions granted by Resolution 18-210, CD1, are not transferable to any land or property not specifically described in Exhibit A.

8. CITY'S RELATIONSHIP TO THE DEVELOPER AND PROJECT

This Agreement shall not be construed as creating a partnership, joint venture or other agency relationship between the City and the Developer. The City is not the developer of the Project and shall not be deemed to have assumed any liability whatsoever with respect to the development, construction, ownership, management, and operation of the Project.

The Developer shall defend, indemnify, and hold the City harmless from any claim or demand made by any person or entity pertaining to the Project for death, personal injury, and property damage, including reasonable attorney's fees.

9. CITY'S RIGHTS AND REMEDIES

The City, including the City Council, reserves all rights and remedies available to it in law or in equity if the Developer shall fail to perform any of the Developer's obligations in this Agreement and shall fail to correct such default within 30 days after written notice of the default from the City or such longer time as may be reasonably necessary to effect such cure in the event that such cure cannot be reasonably accomplished within said 30-day period, so long as the Developer shall commence efforts to cure within the 30-day period and diligently proceed with such cure.

10. MISCELLANEOUS TERMS

A. Amendment. The provisions of this instrument may be amended only by each party executing a subsequent written instrument that states each amended provision.

B. Binding Effect. Upon its execution by each party, this instrument shall become binding and enforceable according to its provisions. If more than one party is obligated to perform an act by any provisions stated in this instrument, those parties shall be jointly and severally liable and obligated for the performance of those acts. The rights and obligations of each party named in this instrument shall bind and inure to the benefit of each party, respectively, and the respective heirs, personal representatives, successors, and assigns of each party.

C. Applicable Law. The provisions of this instrument shall be interpreted in accordance with the law of the State of Hawaii as that law is construed and amended from time to time.

D. Authorization. Each party warrants to each other party that the individuals executing this instrument are authorized to do so.

E. Consent. Subsequent Agreement. If a subsequent consent required of any party by the provisions of this instrument is requested by a party, it shall not be unreasonably withheld by the party to whom the request is made.

F. Construction. Each party named in this instrument acknowledges and agrees that: (i) each party is of equal bargaining strength; (ii) each party has actively participated in the negotiation and preparation of this instrument; (iii) each

party has consulted with their respective legal counsel and other professional advisors as each party has deemed appropriate; (iv) each party and the party's legal counsel and advisors have reviewed this instrument; and (v) each party has agreed to be bound by the terms stated in this instrument following its review and obtaining advice.

G. Counterparts. This instrument may be executed by the parties in counterparts. The counterparts executed by the parties named in this instrument and properly acknowledged, if necessary, taken together, shall constitute a single instrument.

H. Dates. If any dates stated in this instrument fall on a Saturday, Sunday, or legal holiday observed by the City, such date shall be the next following business day.

I. Defined Terms. Certain terms where they initially are used in this instrument are set off by quotation marks enclosed in parentheses and are subsequently capitalized. Those designated terms shall have the same meaning throughout this instrument, unless otherwise specifically stated or clearly inappropriate in the context.

J. Force Majeure. If any party is prevented from performing its obligations stated in this instrument by any event not within the reasonable control of that party, including, but not limited to any act of God, public enemy, or war, fire, an act or failure to act of a government entity, unavailability of materials, or actions by or against labor unions, it shall not be in default in the performance of its obligations stated in this instrument.

PROVIDED, HOWEVER, any party delayed by such an event shall request an extension of time to perform its obligations stated in this instrument by notifying the party to which it is obligated within ten days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this instrument shall be extended by the number of days of delay caused by the event. If the required notice is not given by the delayed party, no time extension shall be granted.

K. Gender; Number. In this instrument, the use of any gender shall include all genders and the use of any number if reference to nouns and pronouns shall include the singular or plural, as the context dictates.

L. Integration. This instrument contains all of the provisions of the agreement between the parties pertaining to the subject matter stated in this instrument. Each party acknowledges that no person or entity made any oral or written representation on which this party has relied as a basis to enter into the agreement stated in this instrument which is not included as a provision in it.

M. Memorandum. If required by the provisions of this instrument or requested by any party, a memorandum of this instrument shall be executed by the parties, the signatures properly acknowledged by a Notary Public, and recorded in the Bureau of Conveyances or Land Court, State of Hawaii, or both, as appropriate.

N. No Drafter. No party shall be deemed to have drafted this instrument. No provision stated in this instrument shall be construed against any party as its drafter.

O. Notice. Any notice required or permitted by the provisions of this instrument to be given by a party to any party, shall be in writing and either shall be delivered personally or mailed postage pre-paid by certified mail, return receipt requested, to each other party at the address and to the person designated by each party, stated below. No other method of notice shall be effective.

(1) CITY AND COUNTY OF HONOLULU:

Department of Planning and Permitting
650 South King Street, 7th Floor
Honolulu, Hawaii 96813
Attention: Director

(2) SELF-HELP HOUSING CORPORATION OF HAWAII

Self-Help Housing Corporation of Hawaii
1427 Dillingham Boulevard, #305
Honolulu, Hawaii 96817
Attention: Executive Director

P. Paragraph Titles. The titles of provisions stated in this instrument are included only for the convenience of the parties. They shall not be considered in the construction of the provisions stated in this instrument.

Q. Required Actions by the Parties. Each party named in this instrument agrees to execute the instruments and to diligently undertake the acts necessary to consummate the transaction contemplated by this instrument.

R. Severability. If any provision stated in this instrument subsequently is determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remaining provisions stated in this instrument, unless that effect is made impossible by the absence of the omitted provision.

S. Survival. Any representation and warranty stated in this instrument made by a party shall survive the termination of the agreement stated in this instrument, unless otherwise specifically stated.

[*The remainder of this page is intentionally left blank. The signature page follows.*]

IN WITNESS WHEREOF, the undersigned parties have signed this instrument as of the date first written above.

DEVELOPER:

SELF-HELP HOUSING CORPORATION OF HAWAII

By _____
Claudia Shay
Its Executive Director

CITY:

CITY AND COUNTY OF HONOLULU

By _____
Kathy K. Sokugawa
Its Acting Director of
Planning and Permitting

APPROVED AS TO FORM AND
LEGALITY

By _____
Deputy Corporation Counsel
of the City and County of
Honolulu

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this day of_____, 201_, before me personally appeared_____, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawai'i

Printed Name: _____

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

_____

Doc. Date:_____or ☐ Undated at time of notarization.

No. of Pages: _____

Jurisdiction:_____Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and Certification Statement

Printed Name of Notary

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this day of_____, 201_, before me personally appeared_____, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawai'i

Printed Name: _____

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

_____

Doc. Date:_____or ☐ Undated at time of notarization.

No. of Pages: _____

Jurisdiction:_____Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and Certification Statement

Printed Name of Notary

EXHIBIT A

Legal Description of the Property

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

CERTIFICATE

RESOLUTION 18-210, CD1

Introduced:	09/27/18	By:	ERNEST MARTIN – BY REQUEST	Committee:	ZONING AND HOUSING

Title: RESOLUTION AUTHORIZING EXEMPTIONS FROM CERTAIN REQUIREMENTS RELATING TO THE POKAI BAY SELF-HELP HOUSING AFFORDABLE HOUSING PROJECT AT WAIANAE, OAHU, HAWAII, TAX MAP KEYS 8-6-027: 001 THROUGH 004, 049 THROUGH 054, AND 064 THROUGH 123.

Voting Legend: * = Aye w/Reservations

10/18/18	ZONING AND HOUSING	CR-360 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION AS AMENDED IN CD1 FORM.
10/30/18	SPECIAL COUNCIL	CR-360 AND RESOLUTION 18-210, CD1 AS AMENDED WERE ADOPTED. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

GLEN I. TAKAHASHI, CITY CLERK

ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER